

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:17-CV-1113

NORTH CAROLINA DEMOCRATIC
PARTY; CUMBERLAND COUNTY
DEMOCRATIC PARTY; DURHAM
COUNTY DEMOCRATIC PARTY;
FORSYTH COUNTY DEMOCRATIC
PARTY; GUILFORD COUNTY
DEMOCRATIC PARTY;
MECKLENBURG COUNTY
DEMOCRATIC PARTY; ORANGE
COUNTY DEMOCRATIC PARTY; and
WAKE COUNTY DEMOCRATIC
PARTY,

Plaintiffs,

v.

PHILIP E. BERGER, in his official
capacity as PRESIDENT PRO TEMPORE
OF THE NORTH CAROLINA SENATE;
TIMOTHY K. MOORE, in his official
capacity as SPEAKER OF THE NORTH
CAROLINA HOUSE OF
REPRESENTATIVES; THE STATE OF
NORTH CAROLINA; THE NORTH
CAROLINA BIPARTISAN STATE
BOARD OF ELECTIONS AND ETHICS
ENFORCEMENT; and KIMBERLY
STRACH, in her official capacity as
EXECUTIVE DIRECTOR OF THE
NORTH CAROLINA BIPARTISAN
STATE BOARD OF ELECTIONS AND
ETHICS ENFORCEMENT,

Defendants.

**DEFENDANTS' EMERGENCY
MOTION FOR STAY OR
MODIFICATION OF
PRELIMINARY INJUNCTION
PENDING APPEAL**

Having filed their Notice of Appeal (Dkt. No. 47), Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives (“Defendants”), now move, on an emergency basis, under Rule 62(c) of the Federal Rules of Civil Procedure for the Court to stay the Preliminary Injunction granted in favor of Plaintiff in the Court’s Memorandum Opinion and Order (Dkt. No. 45) or, alternatively, to dissolve the Preliminary Injunction pending appeal, so that Section 4(a) of Session Law 2017-214 can be uniformly applied to local and statewide judicial elections. In support of this Motion, Defendants refer the Court to the brief filed contemporaneously herewith.

Due to the impending filing period for appellate court races, which, based on the Court’s Preliminary Injunction, is to begin on February 12, 2018, Defendants also move for expedited consideration of this Motion.

WHEREFORE, Defendants pray that

- (1) This Court stay the Preliminary Injunction or, alternatively, dissolve the Preliminary Injunction pending appeal;
- (2) Review this Motion on an expedited basis, requiring any response from Plaintiffs to be filed by Monday, February 5, 2018, or Tuesday, February 6, 2018, by noon, and ruling as soon as possible thereafter;
- (3) For such other and further relief as this Court deems appropriate.

Respectfully submitted this 2nd day of February, 2018.

NELSON MULLINS RILEY &
SCARBOROUGH LLP

By: /s/ D. Martin Warf
Noah H. Huffstetler, III
N.C. State Bar No. 7170
D. Martin Warf
N.C. State Bar No. 32982
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 877-3800
noah.huffstetler@nelsonmullins.com
martin.warf@nelsonmullins.com

*ATTORNEYS FOR Defendants PHILIP
E. BERGER, in his official capacity as
President Pro Tempore of the North
Carolina Senate and TIMOTHY K.
MOORE, in his official capacity as
Speaker of the North Carolina House of
Representatives*

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel and parties of record.

This the 2nd day of February, 2018.

NELSON MULLINS RILEY &
SCARBOROUGH LLP

By: /s/ D. Martin Warf
Noah H. Huffstetler, III
N.C. State Bar No. 7170
D. Martin Warf
N.C. State Bar No. 32982
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 877-3800
noah.huffstetler@nelsonmullins.com
martin.warf@nelsonmullins.com

*ATTORNEYS FOR Defendants PHILIP
E. BERGER, in his official capacity as
President Pro Tempore of the North
Carolina Senate and TIMOTHY K.
MOORE, in his official capacity as
Speaker of the North Carolina House of
Representatives*